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BEFORE THE SEATTLE CITY COUNCIL

In the Matter of the Application of )  
)  
**SEATTLE CHILDREN'S HOSPITAL** ) **No. CF 308884**  
)  
For approval of a Major Institution Master Plan ) SEATTLE CHILDREN'S  
) HOSPITAL REPLY TO  
) RESPONSES  
)

**I. INTRODUCTION**

Seattle Children's Hospital ("Children's") submits this Reply to the Response statements filed with the City on September 21. Although there were 14 Responses made<sup>1</sup>, this Reply will focus on the Laurelhurst Community Club ("LCC") and Grace T. Yuan Responses in order to avoid repetition of the points made previously in Children's August 25, 2009 Appeal and its September 21, 2009 Response.

In this Response, Children's has attempted to address the themes that underlie LCC's arguments. Because Children's believes that these themes are mistaken for one fundamental reason or another, they are referred to rhetorically as LCC "myths." In the case of each one, Children's will explain what it believes is the more accurate perspective.

<sup>1</sup> Responses were filed by the Director of Department of Planning and Development, Laurelhurst Community Club, Dixie and Steve Wilson, Colleen McAleer, Myriam Muller, Friends of Children's, Dolores Sibonga, Cary Lassen, Karen Wolf, Robert Lucas, Greater Seattle Chamber of Commerce, Michael Perlman, Grace Yuan, and Seattle Children's Hospital.

ORIGINAL

1 Because this is a Reply, mostly to arguments made by the LCC, this memorandum  
2 is more about neighborhood impact than it is about the patients and families of patients  
3 who rely upon Children's pediatric services. This short-changing of patients in this  
4 memorandum should not suggest that they should be ignored by the City Council when it  
5 exercises its judgment in this matter.

## 6 II. DISCUSSION

### 7 A. LCC Myth #1: The Laurelhurst Neighborhood is at the 8 "Tipping Point."

9 LCC asserted in its Appeal that Children's proposed Master Plan puts the  
10 Laurelhurst neighborhood past the "tipping point of neighborhood viability" (Appeal at 6).  
11 The "tipping point" assertion is repeated again at various points in its Response. There is  
12 scant evidence for this claim.

13 The Examiner identified two areas of potential adverse impact on the neighborhood  
14 that led to her recommendation of denial: traffic and height, bulk and scale. The  
15 Examiner's conclusions with respect to these potential impacts are found in Conclusion 25  
16 (transportation), Conclusions 36-38 (height, bulk and scale), and repeated again in  
17 Conclusions 43, 44 (balancing).<sup>2</sup> LCC has offered up these same impacts in its Response  
18 as a basis for alleging that Children's proposed Master Plan puts the livability of the  
19 Laurelhurst neighborhood beyond its "tipping point."

20 Let's put this claim in perspective. There is a full gamut of environmental impacts  
21 that can befall a neighborhood. The City's SEPA Code calls these "elements of the

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22 <sup>2</sup> The Examiner is also recommending denial of Children's Master Plan because it is  
23 outside of an urban village (see Conclusions 40-43). These Conclusions, however, raise a  
legal issue, not a "livability" issue, and, in any event constitute error by the Examiner for  
the reasons described in Children's Appeal, at 8-10, DPD's Appeal, at 2 and DPD's  
Response, at 4-6.

1 environment.” See SMC 25.05.444. The EIS for Children’s Master Plan lists 46 elements  
2 of the environment. See Ex. 6, at vii-ix. In scoping the elements of the environment that  
3 required review in relation to Children’s proposed Master Plan, DPD determined that 30 of  
4 them required review. *Id.*

5 With respect to the vast majority of environmental impacts that could affect the  
6 livability of a neighborhood, neither the CAC, DPD or the Examiner has found any  
7 difficulty, e.g. air quality, odor, water supply, scenic resources, noise, releases to the  
8 environment affecting public health, recreation, schools, parks, and many other areas of  
9 potential neighborhood concern. LCC’s allegation that the “tipping point” for the livability  
10 of Laurelhurst has been passed is based upon two elements of the environment:

- 11 • Aesthetics
- 12 • Transportation

13 We will take another look at each of them and ask the Council whether, in its  
14 judgment, the adverse impacts caused by Children’s Master Plan in each of these areas will  
15 likely push the Laurelhurst neighborhood past the tipping point of livability.

16 Aesthetics. The basis for the Examiner’s adverse conclusions with respect to  
17 aesthetics (referred to as “Aesthetics/Height, Bulk and Scale” in the EIS) are based  
18 primarily upon the hypothetical future view of Children’s facilities from two viewpoints  
19 (13 viewpoints were considered in the EIS). See FEIS, Ex. 6, Appendix C. She used  
20 Viewpoints 8 and 13 to assess the impacts on the 6 residences across the street from  
21 Children’s campus on NE 45th Street and the 6 residences across the street on 40<sup>th</sup> Avenue  
22 NE. See Findings 76 and 77.

1 No adverse impacts are desirable and Children's has not dismissed these view  
2 impacts or denied these residents mitigation. These photomontages, however, are shown  
3 without the benefit of building design and street treatment that Children's is committed to  
4 providing at both of these locations. These measures are in addition to the street level  
5 setbacks, buffers, and upper level terracing that Children's has also committed to. Given  
6 this context. Children's does not believe it is fair to say that the views from these two  
7 vantage points can reasonably be used to prove that the Laurelhurst neighborhood,  
8 composed of what LCC says on its letterhead are "2800 households and businesses," has  
9 lost its livability.

10 LCC's land use goal for its neighborhood states that: "Land use policy should  
11 assure that new development will enhance the community and recognize the need to  
12 *protect the single family stability* against the increasing pressure of intensive land uses."  
13 See Ex. 96, at 3 (emphasis supplied). Children's proposed expansion of its boundaries  
14 covers only L-3 zoned property, not single-family. Children's literally moved its proposed  
15 hospital facilities off of the 21-acre hill that the existing campus is located on in order to  
16 move away from Laurelhurst's single-family residences on its northern, eastern and  
17 southern boundaries. That movement *away from* its single-family neighbors is the essence  
18 of Alternative 7R, which is now the proposed Master Plan.

19 Transportation. The Examiner used "unmitigated adverse traffic impacts" as the  
20 second basis for her recommendation of denial. See Conclusions 25 and 44. Nobody  
21 wants unmitigated traffic impacts but it would be difficult to make a convincing case that  
22 the traffic impacts referred to by the Examiner will destroy the livability of the Laurelhurst  
23 neighborhood.

1 To begin with, because Children's has eliminated the need for new access points  
2 from its northern (NE 50th Street) and southern (NE 45th Street) boundaries, there will be  
3 no traffic to or from Children's passing through internal Laurelhurst neighborhood streets.  
4 Access will be limited to Sand Point Way NE and NE 40th Avenue, a result positively  
5 affirmed by the Examiner. *See Findings 95-100 and Conclusion 26.*

6 The areas where Children's traffic will affect congestion are in the Montlake and  
7 NE 45th Street corridors. These are regional corridors used by neighborhoods throughout  
8 northeast Seattle. They are not part of the Laurelhurst neighborhood. Granted, congestion  
9 here will affect the speed with which residents of Laurelhurst (and other neighborhoods)  
10 can commute to and from their homes. Contrary to what the Examiner's Report states,  
11 however, the City's EIS analysis did not conclude that Children's will produce significant  
12 and unavoidable adverse impacts in these corridors. *See Ex. 6, at 3.10-67.*

13 What the City Council must decide is whether or not Children's adverse impacts on  
14 the Montlake/NE 45th Street corridors, which add one minute of travel time (15 instead of  
15 14 minutes, Ex. 6, Table 3.10-5) in the most congested 15 minutes of the day between  
16 Children's and the south side of the Montlake Bridge when Children's is at full build out,  
17 will push the Laurelhurst neighborhood past the point of livability. At arguably the most  
18 congested intersection in these corridors, Five Corners, Children's share of that traffic at  
19 full build out will be 8%. Ex. 6, at 3.10-67 and -68. Again, the City Council must  
20 consider the full range of purposes in the Major Institution Code and "accommodate"  
21 Children's need for expansion while also assuring that Children's traffic mitigation is  
22 aggressive and exemplary.

1           There is probably no other entity reliant upon the Montlake/NE 45th Street  
2 corridors who has been as aggressive as Children's in their commitment to changing the  
3 character of these corridors to a higher proportion of transit and HOV users. Children's  
4 commitment to a maximum 30% SOV mode for its employees in an area of the City that  
5 is not blessed, like downtown or the U District, with frequent transit service, is remarkable.  
6 Add to that its \$3.9 million commitment in capital contributions for street, bicycle and  
7 pedestrian improvements. The Examiner expressed concern because Children's will only  
8 mitigate 40-60% of its traffic. If every commuter group using these corridors could do as  
9 well, including Laurelhurst and other neighborhoods, congestion in these corridors could  
10 be further improved.

11           Left out of LCC's "tipping point" argument (as well as the Examiner's  
12 consideration) are the tangible offsetting *benefits* that Children's will bring to the  
13 neighborhood. An expanded hospital represents expanded opportunities for more of  
14 Children's neighbors to work at Children's. Approximately, one-fourth of Children's  
15 employees live within three miles of the hospital. Ex. 86, at 15. Children's has and will  
16 continue to lobby for better transit service for northeast Seattle. Children's already funds  
17 63 additional runs per week on the two King County Metro routes serving its northeast  
18 neighbors. See Ex. 86, at 9. Children's proposed bicycle-pedestrian connection through  
19 the Hartmann property will provide new access between Sand Point Way NE and the  
20 Burke Gilman Trail. In addition, Children's will provide the City with \$2 million to fund  
21 bicycle and pedestrian improvements in northeast Seattle that are currently unfunded. All  
22 of these benefits will be available to the residents of Laurelhurst, Ravenna/Bryant and  
23 other northeast Seattle neighborhoods.

1           There is no evidence in the record that Children's proposed Master Plan will  
2       increase the crime rate in the very low-crime Laurelhurst neighborhood, or adversely  
3       impact its schools, parks or other recreational facilities, or lower property values, or cause  
4       any other problems that many of Seattle's neighborhoods must contend with on a regular  
5       basis. Whether it is a helistop or a master plan, Children's has always done a better job  
6       implementing its projects than Laurelhurst and others alleged. Children's is fully  
7       committed to do so again with this Master Plan.

8           The fact that some Laurelhurst residents (and the residents of other neighborhoods)  
9       will be able to see the proposed new buildings, mostly on a strictly drive-by basis, is not a  
10      basis to deny Children's Master Plan. Neither does Children's believe that a slightly  
11      increased delay in travel time through the Montlake/NE 45th corridors at Children's full  
12      build out should serve as a basis for denying the growth of this hospital. Commuters from  
13      virtually every neighborhood in Seattle suffer from congestion somewhere on their routes  
14      to and from work, school or recreation. At the end of the day, that's still better than not  
15      having enough beds to serve the children who need the special medical services that  
16      Children's provides.

17           Mr. Steve Ross, co-chair of Friends of Children's, himself a Laurelhurst resident,  
18      testified to the Hearing Examiner as to his view of how Children's proposed Master Plan  
19      will affect the Laurelhurst neighborhood. He stated it quite succinctly:

20                   Laurelhurst is a great neighborhood now and they will  
21                   continue to be a great neighborhood.

22           Ross Testimony, July 14, 2009.

1                   **B.     LCC Myth #2: Children’s Approach Has Been “All or**  
2                   **Nothing.”**

3                   LCC has repeatedly stated that Children’s approach throughout the two and a half-  
4                   year Master Plan process has been “all or nothing.” For example, they say that the  
5                   Examiner’s decision “recommended denial of Children’s *all or nothing* Master Plan  
6                   application,” and that “the ultimate approach taken by the CAC and the outcome of its  
7                   process was dictated by Children’s *all or nothing approach* leading directly to the  
8                   Examiner’s denial recommendation.” Response at 1 and 6.

9                   The truth of the matter is something entirely different. Yes, Children’s has been  
10                  steadfast in its advocacy for enough beds in its Master Plan to make up for the existing bed  
11                  deficit on the campus and meet its expected needs over the life of a 20-year Master Plan.  
12                  Providing beds for the children of this City and the region who are sick enough to require  
13                  inpatient treatment is the essence of Children’s mission. This is not a land use tactic or  
14                  strategy. This is what Children’s does.

15                  Children’s constancy in its advocacy for an expansion that meets its projected bed  
16                  needs over the next 20 years is also consistent with the City’s Major Institution Master  
17                  Plan process. The Seattle Major Institution Code policies require that the City  
18                  “*accommodate* the changing needs of major institutions.” SMC 23.69.002.H (emphasis  
19                  added). The City’s SEPA provisions require that the City analyze only the impacts of  
20                  “reasonable alternatives,” defined as “an action that could feasibly attain or approximate a  
21                  proposal’s objectives, but at a lower environmental cost or decreased level of  
22                  environmental degradation.” SMC 25.05.786. For Children’s to have offered an  
23



1 expansion alternative that does not meet its projected growth needs would, in terms of the  
2 City's SEPA Code, have been to offer an "unreasonable alternative."<sup>3</sup>

3 For over two and a half years, Children's has been searching for the optimum  
4 "reasonable alternative," i.e. a way to meet its projected 600-bed need "at a lower  
5 environmental cost or decreased level of environmental degradation." The evolution of the  
6 Master Plan now before the City Council is a history of constant modification and  
7 compromise by Children's in response to concerns articulated by the DPD, the CAC,  
8 Children's neighbors and the general public.

9 Children's started this Master Plan process in July 2007 with a Concept Plan to put  
10 all of its proposed development on the existing 21-acre campus at heights of up to 240 feet  
11 with 170,000 square feet of development on the Hartmann site across Sand Point Way NE  
12 at heights up to 120 feet. This was "Alternative 2" in the Draft EIS, which was later  
13 eliminated by Children's at the request of DPD and the CAC.

14 In response to DPD's September 24, 2007 EIS Scoping Report, Children's offered  
15 the following new alternatives:

16 Alternative 3: By changing the bed configuration on each  
17 floor to 36 beds instead of 24, Children's proposed lowering  
18 of MIO heights to 160' south of Penny Drive (down from  
240'), and lowering Hartmann heights to 105' (down from  
120') – this alternative did not include Laurelon Terrace;

19 Alternative 4: Expanding the Campus to include Laurelon  
20 Terrace in the latest phase of development (in case  
21 Children's could succeed in purchasing it by then) with MIO  
heights of up to 160' on the existing campus and Hartmann  
up to 105'.

22 <sup>3</sup> DPD communicated as much to the CAC: "LCC's proposed growth of 250,000 to  
23 300,000 square feet appears to represent an additional 62 to 75 beds over the existing 250.  
DPD determines that such concepts would neither attain nor approximate the objectives  
defined by CHRMC." See Ex. 28.

1 See Benfield letter to DPD Director, October 29, 2007, Ex. 30.

2 LCC claims that Children's never agreed to consider an alternative with lesser  
3 square footage. This is not true. Early in the process, Children's agreed, in response to a  
4 CAC request, to include the then "LCC proposal" for substantial reductions in Children's  
5 square footage in the Master Plan and EIS process:

6 Although the LCC proposal does not meet Children's patient  
7 care needs, we endorse including it in the Master Plan and  
EIS process, in order to comply with the desires of the CAC.

8 See Benfield letter to DPD Director and CAC Chair, dated November 5, 2007, Ex. 32.

9 The CAC continued to shape the alternatives being considered in Children's  
10 Preliminary Draft Master Plan (January 2008) and Draft Master Plan (April 2008). These  
11 alternatives became the alternatives considered in the Preliminary Draft EIS (April 2008)  
12 and Draft EIS (June 2008). This was long before Children's selected a preferred master  
13 plan alternative. As Ruth Benfield, Children's representative on the CAC, stated: "I want  
14 to be clear about our desire that the CAC play a very significant role in shaping the master  
15 plan." Ex. 33.

16 By the time of the issuance of the Preliminary Draft EIS in April 2008, Children's  
17 had made an important compromise with respect to vehicle access to the sites. "Children's  
18 is no longer proposing that general site access be provided on 45th Street NE for any of the  
19 Build Alternatives, and is no longer proposing that general site access be provided on 50th  
20 Street NE for Alternative 7." Preliminary Draft EIS, at 1-9; *see also* Ex. 8 § V, minutes of  
21 CAC meeting No. 9 (4/15/08). This was an important step in Children's and the CAC's  
22 objective to avoid constructing any new general vehicle access points into the existing  
23

1 21 acre campus from the surrounding single-family neighborhood on the north, east and  
2 south.

3 In the late summer of 2007, after the master plan process was underway, the  
4 Laurelon Terrace Condominium Board approached Children's and agreed that Children's  
5 could respond to individual Laurelon Terrace owners who wanted to sell their units to  
6 Children's. *See* Ex. 34; Buck Testimony, March 2, 2009. Children's began purchasing  
7 individual units at fair market value. Until the Laurelon Terrace Board gave its consent to  
8 such purchases, however, Children's had never purchased a single one of the 136  
9 condominium units in Laurelon Terrace. *Id.*

10 In the first quarter of 2008, the opportunity to make a quantum leap in the  
11 mitigation of impacts from Children's Master Plan emerged. The Laurelon Terrace Board,  
12 with the assistance of their own appraiser and lawyers, negotiated a proposed sale of the  
13 entire 6.75 acre Laurelon Terrace Condominium site to Children's. The price was steep:  
14 Laurelon Terrace demanded and Children's agreed to pay a total price of \$93 million  
15 (approximately 2.8 times the fair market value of the property), contingent upon a vote by  
16 the individual owners and Children's receiving approval from the City Council to extend  
17 its boundaries and develop the Laurelon Terrace property. *See* Agreement of Purchase and  
18 Sale, Ex. 24. In a vote of the Laurelon Terrace owners conducted in September, 2008, they  
19 agreed to approve the sale to Children's, which opened up the opportunity to develop what  
20 became "Alternative 7R" of the EIS, an alternative allowing for early and full development  
21 of Children's Master Plan on the Laurelon Terrace site for all phases of development. *See*  
22 Final EIS, dated November 10, 2008, Table 1-1.

1 Alternative 7R allowed Children's to respond to many of the CAC's key concerns  
2 with the other EIS alternatives: It allowed the bulk of development to take place on  
3 property that was significantly lower in elevation than the existing campus; and it assured  
4 CAC and the neighbors that there would be no new general access points developed along  
5 the boundaries of the campus that were adjacent to single-family residences.

6 Children's and the CAC did not stop making modifications with the mere  
7 identification of the "Alternative 7" configuration on the Laurelon Terrace site. Instead,  
8 this became the starting point for significant additional modifications to further lessen the  
9 impacts of this alternative. From mid-2008 until the issuance of its "Final Report and  
10 Recommendations" dated February 3, 2009 (Ex. 8), here is what the CAC accomplished,  
11 largely with Children's willingness to compromise with respect to its proposed Master  
12 Plan:

- 13 • The CAC identified "Alternative 7R" as the "platform upon which the  
14 final approved Master Plan is based" (Recommendation 4, approved 13-1,  
15 1 abstaining, on January 6, 2009).
- 16 • The CAC developed a "Monitoring and Agency Oversight" condition to  
17 require that Children's development proceed in phases, and that prior to  
18 construction of each phase Children's clearly demonstrate that the  
19 additional construction is needed for patient care (Recommendation 2,  
20 approved 15-0, on January 20, 2009).
- 21 • The CAC approved a condition that the Floor Area Ratio (FAR) of  
22 Children's development be limited to a maximum of 1.5, excluding  
23

1 parking and below grade space (Recommendation 3, approved 13-1, 1  
2 abstaining, on January 8, 2009).

- 3 • Children's agreed to lower the height of the Hartmann development from  
4 105' to 65', the CAC approved the expansion to Hartmann  
5 (Recommendation 5, approved 9-6, on December 9, 2008), but added a list  
6 of nine conditions that required preservation of the Sequoia trees, a  
7 pedestrian-bike connection from Sand Point Way NE to the Burke-Gilman  
8 Trail, expanded setbacks, more landscaping, reduced lot coverage, and  
9 other measures (Recommendation 6, approved 13-2, on December 16,  
10 2008).
- 11 • Children's agreed to reduce the MIO 160' height for the new development  
12 on the Laurelon Terrace side to 140' and 125' using a demarcation line  
13 that the CAC approved, along with other recommended height limits  
14 (Recommendation 7, approved 12-3, on January 20, 2009).
- 15 • DPD recommended in its initial Report, an upper level setback area for  
16 buildings greater than 50' in height that would extend 40' *deep* into the  
17 site along the western edge of the campus (Ex. 9, at 74) – the CAC asked  
18 that this same upper level setback extend 80' *deep* into the site and  
19 Children's agreed (Recommendation 7).
- 20 • The CAC reviewed Children's Transportation Management Plan with the  
21 benefit of its own independent transportation consultant (Heffron  
22 Transportation, Ex. 42) and approved it (Recommendation 8, 14-1, 1  
23 abstaining, on January 27, 2009).

- 1           • The CAC spent considerable time discussing the required replacement  
2           housing for the 136 Laurelon Terrace units, formed a subcommittee to deal  
3           with this issue, and finally approved a set of seven parameters that formed  
4           the basis for the Office of Housing and Children's proposed Memorandum  
5           of Agreement for replacement housing (Ex. R-6) (Recommendation 10,  
6           approved 15-0, on January 27, 2009).
- 7           • With respect to open space, the CAC recommended that a minimum of  
8           41% of the expanded campus, i.e., 12.9 acres, be maintained as open space  
9           with no more than 1/5th of that constituting rooftop open space  
10          (Recommendation 11, approved 12-0, 1 abstaining, on January 29, 2009).
- 11          • Finally, the CAC recommended a further set of conditions to protect the  
12          Laurelhurst Condominium site, which is across Sand Point Way NE and  
13          adjacent to the Hartmann property, including noise abatement, noise  
14          monitoring, reductions of light and glare, and other protective measures  
15          (Recommendation 12, approved 14-1, on January 6, 2009).
- 16          • Children's agreed to prepare a comprehensive set of Design Guidelines for  
17          its Master Plan that must be reviewed by the Seattle Design Commission –  
18          these Design Guidelines will be used by the Standing Advisory Committee  
19          and DPD in reviewing future Children's development (design review is  
20          not otherwise required of major institutions). (Ex. 9, at 39 and 74-75)

21           In sum, the proposed Final Master Plan (Ex. 4) that emerged for consideration by  
22           the City Council is significantly changed and improved from what started in July 2007.

23           There has never been an "all or nothing" approach by Children's to this process.

1 Children's constantly listened to CAC, DPD and public input, and made, in some cases,  
2 drastic compromises from its initial approach. DPD has summarized the changes that were  
3 made to the Concept and Draft Master Plans in its Report. Ex. 9, at 6-7.

4 LCC has paid little heed to the significant modifications, concessions and  
5 enhancements that have been made by Children's with respect to its Master Plan  
6 throughout this process. Children's knows of no other major institution master plan  
7 applicant who has done more to listen and to compromise in order to improve its Master  
8 Plan and lessen its impacts.

9 **C. LCC Myth #3: The CAC and DPD Processes Are Inferior to the**  
10 **Hearing Examiner Process.**

11 LCC offers this comparative description of the roles of the Examiner, the CAC and  
12 DPD:

13 *Others such as the CAC, DPD, etc. each have a partial*  
14 *perspective: the Examiner is the only one who is responsible*  
15 *for a complete perspective. Unlike, for example, DPD staff,*  
16 *her employment or appointment is for a set term and does*  
17 *not depend from day to day on the Executive or the Council.*  
18 *Nor is she susceptible to "policy" direction by higher ups.*

19 Response at 4-5.

20 Ignoring the suggestion that DPD staff is making Code interpretations and judgments in  
21 obedience to "higher ups," the comparison is still wrong.

22 The truth of the matter is that the Major Institution Code is structured to obtain  
23 three unique and important perspectives on each major institution master plan application:

- *The CAC perspective:* This was a Council-appointed committee of eighteen citizens (15 regular and 3 alternates) representing the Laurelhurst, Ravenna/Bryant, Hawthorne Hills, View Ridge and Montlake neighborhoods, some with experience and expertise in neighborhood organization, land use and zoning, architecture and building development –

1 15 of the 18 CAC members were residents of these five neighborhoods and  
2 8 of them were residents of Laurelhurst.

- 3 • *DPD*: This is the City department who is charged with interpreting,  
4 applying and enforcing the City's land use and related codes on a daily  
5 basis, and the department who has reviewed and made recommendations on  
6 all 13 major institution master plans that have been approved by the City  
7 Council.
- 8 • *Hearing Examiner*: This is the City department established to conduct  
9 hearings on decisions made by City agencies, including major institution  
10 master plans.

11 Certainly, the Hearing Examiner has a very important role in the MIMP process.  
12 Children's has the highest respect for Chief Hearing Examiner Sue Tanner who heard  
13 Children's application. Ms. Tanner is professional, courteous, patient and possessed with  
14 good judicial temperament. However, unlike DPD, this was the first MIMP she  
15 considered. Unlike the CAC, she did not have the freedom to discuss and engage in the  
16 kind of back and forth dialogue and argument that happened at the CAC.<sup>4</sup> In fact, in the  
17 hearing on Children's proposed Master Plan, Ms. Tanner did not ask a single substantive  
18 question of the witnesses and presenters.

19 The point is this. The Major Institution Code is not a step-ladder with the Hearing  
20 Examiner on the top rung; it was quite deliberately designed as a three-legged stool with  
21 recommendations required by the CAC, the DPD, and the Examiner. This is the only City  
22 land use process that mandates recommendations from each of these three entities. For this

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23 <sup>4</sup> The Final Report and Recommendations of the CAC also included Minority Reports,  
each one signed by those members of the CAC wishing to do so. *See* Ex. 8, Appendix 1.  
Children's is very familiar with each and every one of the issues featured in the Minority  
Reports. For the most part, the Minority Reports include positions that were fully aired  
during the 26 CAC meetings and rejected by the majority of the CAC. Some of these  
minority positions constitute positions that were held by a majority of the CAC members  
when it made its comments on Children's Draft Master Plan in July 2008. *See* Ex. 8,  
Appendix 2. However, these Minority Reports are just that, an expression of dissent from  
the positions recommended by the majority of the CAC in its Final Report dated February  
3, 2009. *See* Ex. 8.



1 reason, LCC has seriously misconstrued the Major Institution Code in its characterization  
2 of the process.

3 LCC is also wrong in asserting that the “Hearing Examiner should be afforded  
4 substantial deference” by the Council. Response at 3. LCC misleads the Council in citing  
5 SMC 23.69.032.I and SMC 23.76.054 for this proposition because there is no such  
6 language found in either of these code provisions. All appellants have the burden of  
7 making their respective cases from the factual record assembled by the Examiner. This  
8 does not mean, however, that the Council can give any legal deference to the findings,  
9 conclusions and recommendations of the Examiner.

10 Children’s believes that it is incumbent upon the Council to give equal  
11 consideration to all three recommendations mandated by the Major Institution Code: the  
12 Analysis, Recommendation and Determination of the DPD (Ex. 9 and R-3), the Final  
13 Report and Recommendation of the CAC (Ex. 8), and the Hearing Examiner’s  
14 Recommendation of August 11, 2009.

15 **D. LCC Myth #4: Balancing Means Eliminating Needed Beds.**

16 LCC has attempted to create its own very limited construct of the policies in the  
17 Major Institution Code. In essence, LCC argues that there is a single criteria: “balance”  
18 between an institution’s need and the livability of the neighborhood. LCC then makes the  
19 unfounded leap in logic that in order to achieve “balance” the City must deprive the  
20 institution of its needed growth in order to eliminate the impacts. *See* Response, at 28-33.

21 The Major Institution Code sets forth thirteen purposes, which are listed A-M in  
22 SMC 23.69.002. The word “balance” appears in only one of these purposes, under Item B:  
23 “*Balance* a Major Institution’s ability to change and the public benefit derived from change

1 with the need to protect the livability and vitality of adjacent neighborhoods.”

2 SMC 23.69.002.B (emphasis supplied).

3 It is fundamental in the interpretation of any state law or municipal ordinance that  
4 you not read one provision or policy of a law or ordinance to the exclusion of others. *See*  
5 *Belleau Woods II, LLC v. City of Bellingham*, 150 Wn. App. 228, 242-43, 208 P.3d 5  
6 (2009) (“A court should construe each part or section of a statute in connection with every  
7 other part to harmonize the statute as a whole.”). To the contrary, the City Council is  
8 required, in its interpretation of SMC 23.69, to read the policies and provisions of this  
9 Code in a manner that gives meaning all of its purposes. *See Streng v. Clarke*, 89 Wn.2d  
10 23, 29, 569 P.2d 60 (1977) (“[L]egislative intent is to be ascertained from the statutory text  
11 as a whole, interpreted in terms of the general object and purpose of the legislation.”).

12 If SMC 23.69.002.B were the only statement of purpose, there would be potential  
13 ambiguity as to the meaning of the term “balance” in the City’s Major Institution Code.  
14 That is not the case, however. The other purposes of the Major Institution Code flesh out  
15 the Code’s meaning and give context to the Code’s use of the term “balance.” In fact, at  
16 least three of those purposes state that the intent of SMC 23.69 is to “permit,” “provide  
17 for” and “accommodate” the needs of the patients and families using the City’s major  
18 medical institutions:

19 A. *Permit appropriate institutional growth* within  
20 boundaries while minimizing the adverse impacts associated  
with development and geographic expansion;

21 \*\*\*

22 D. *Provide for coordinated growth* of major institutions  
23 through major institution conceptual master plans and the  
establishment of major institutions overlay zones;

\*\*\*

H. *Accommodate the changing needs of major institutions*, provide flexibility for development and encourage a high quality environment through modifications of use restrictions and parking requirements of the underlying zone.

SMC 23.69.002.A, C and H (emphasis supplied).

When the statements of purpose are read together, it is evident that the intent of the Major Institution Code is to *both* allow the needed educational and medical institution growth to occur *and* to achieve the “balance” between such need for growth and the “livability and vitality of adjacent neighborhoods” through the mitigation of impacts. Mitigation can be achieved without taking a meat axe to the needs of the institution. This theme of mitigation is repeated throughout the purposes of the Major Institution Code. For example, the very first statement of purpose advocates “*minimizing the adverse impacts* associated with development and geographic expansion.” SMC 23.69.002.A (emphasis supplied). Item H says that the Code is intended to “*encourage a high quality environment* through modification of use restrictions.” SMC 23.69.002.H (emphasis supplied). Item L says that the master plan should “provide the basis for determining *appropriate mitigating actions* to avoid or reduce adverse impacts from major institution growth.” SMC 23.69.002.L (emphasis supplied). These statements of purpose do not say that the City Council should reduce impacts by reducing growth; instead, they advocate reducing the adverse impacts “from major institution growth.” *Id.*

The term “balance” is used again later in the Code in the context of the intent of the Major Institution Master Plan. Again, the Code points in the direction of minimizing impacts. “The intent of the Major Institution Plan shall be to balance the needs of the Major Institution to develop facilities for the provision of health care or educational

1 services with the need to minimize the impact of Major Institution development on  
2 surrounding neighborhoods. SMC 23.69.025.

3 The Major Institution Code is not a “zero sum” regimen, where every impact  
4 requires a proportionate reduction of beds. The City’s major institution policies and Code  
5 place a high value on the contributions of its major institutions and, therefore, the Code  
6 requires that Master Plans *both* provide for needed growth and provide the needed  
7 mitigation. Reasonable mitigation measures should be implemented that are responsive to  
8 and commensurate with the growth allowed.

9 What this means it that the Council should be asking the question of not how many  
10 beds should the City lop off from Children’s projected bed needs, but rather the question of  
11 whether or not Children’s has included in its proposed Master Plan a comprehensive,  
12 rigorous and reasonable set of mitigation measures. Even LCC concedes that “no one is  
13 saying that Children’s has to mitigate all of its adverse impacts.” Response at 33.

14 In considering the reasonableness of Children’s mitigation measures, the Council  
15 should consider what Children’s is doing in the context of what it has required of other  
16 major institutions:

- 17 • Children’s has committed to buy the adjacent 6.75 acre Laurelon Terrace  
18 site in order to avoid developing its Master Plan facilities on its existing  
19 campus which is generally more than 100 feet higher in elevation and closer  
20 to the surrounding single-family neighborhoods on the north, east and  
21 south.
- 22 • Children’s will maintain a fully landscaped buffer 75 feet in width around  
23 almost all of the single-family zoned property on the north, east and south,

1 buffers which have customized plant species that reflect the desires of each  
2 adjacent neighbor.

- 3 • Children's will implement its Master Plan and still maintain 41% of its  
4 campus in open space.
- 5 • Children's will augment its Transportation Management Plan with its own  
6 shuttle system and aggressive financial incentives to reduce the number of  
7 Children's employees using single-occupant vehicles to 30%, this in a  
8 neighborhood that has a low level of transit service.
- 9 • Children's will contribute \$1.4 million to projects identified by SDOT in  
10 the Montlake/NE 45th Street corridors, fund a \$.5 million Intelligent  
11 Transportation System for these corridors, and fund \$2 million of bicycle  
12 and pedestrian projects in NE Seattle.
- 13 • Children's will be the first major institution to develop and utilize Design  
14 Guidelines for the future review of its development projects.
- 15 • Children's has committed \$5 million toward affordable replacement  
16 housing in the 52-Unit Solid Ground project at Magnuson as well as other  
17 projects to be selected by the Office of Housing through a competitive  
18 round.
- 19 • Since approval of Children's 1994 Master Plan, it has decentralized every  
20 activity on its main campus that is feasible, including the development of  
21 new administrative medical facilities at 70th and Sand Point and the transfer  
22 of its research functions to the four-block area it has acquired in the Denny  
23

Triangle area of downtown, in order to winnow down its Sand Point Way NE campus to the most essential hospital services.

- Children's has also acquired sites for and will be developing outpatient pediatric clinics in Bellevue, Everett and South King County.

The mitigation that is part of Children's proposed Master Plan is far-reaching, innovative and nearly beyond the realm of what is reasonable. Children's believes that its Master Plan, as mitigated, will fully preserve the livability of its nearby neighbors. When the Council considers this mitigation, we believe it will find the kind of "balance" that is required by the Major Institution Code.

**E. Myth #5: LCC Supports Children's Mission**

In these proceedings, LCC's representatives have said they support Children's mission:

LCC supports the mission of Children's Hospital, its important work and reasonable expansion consistent with the City's Comprehensive Plan, Land Use Code and other laws.

Statement of Jeannie Hale, March 6, 2009, in Ex. 2.

The problem is that this support comes with a condition that LCC interprets to mean that Children's cannot be allowed enough patient beds to actually carry out its mission. LCC is asking the Council to limit Children's Master Plan to no more than 654,000 additional square feet. Using the standard which Children's has used of 4,000 square feet of hospital space needed to support each patient bed, this would only allow 164 more beds over the next 20 years instead of the 350 beds that Children's needs analysis has indicated will be necessary.

1 Which children is LCC asking that Children's turn away? Children's cannot fulfill  
2 its mission without providing an adequate number of beds as well as the emergency,  
3 diagnostic, surgical, intensive care and other medical support facilities needed to care for  
4 the children in Seattle and Children's service area that require these specialized pediatric  
5 services.

6 When it comes to Children's, LCC has always opposed its expansion. In the  
7 process for the 1994 Master Plan, LCC appealed the EIS adequacy determination  
8 (Ord. 117319, Finding 12) and asked the City to approve less than 40% of the space  
9 Children's was then requesting (Ord. 117319, Finding 25(5)).

10 The record in this matter will show that LCC was opposed from the very beginning  
11 of this process in mid-2007 to any expansion sufficient to meet Children's projected needs.  
12 LCC asked, in August 2007, that the expansion be limited to only 250,000 square feet  
13 before any environmental impact analysis had been performed. Ex. 8, Section V. CAC  
14 Minutes of August 14, 2007. Regardless of the alternative configurations considered and  
15 regardless of the continued modifications and mitigations made by Children's since that  
16 first request, with the input of the CAC, DPD and the public, LCC's mantra has been the  
17 same: cut the expansion.

18 The point here is not to disparage LCC for opposing Children's proposed Master  
19 Plan. They and anyone else are entitled to oppose Children's Master Plan. The point is  
20 that the Council should not use LCC's viewpoint alone as the indicia of the impacts from  
21 Children's Master Plan or of the reasonableness of the mitigation of those impacts. No  
22 amount of mitigation would ever satisfy the LCC, which wants the majority of the Master  
23 Plan expansion eliminated.

1           Instead, the Council should consider how the impacts of Children's Master Plan are  
2     perceived, in context, by the broader group of neighborhoods that are immediate to  
3     Children's: i.e., Ravenna/Bryant, Hawthorne Hills, View Ridge, Montlake, and  
4     Laurelhurst. This is not a matter of popularity; it's a matter of understanding the impacts  
5     and defining the appropriate mitigation to address such impacts. All five of these  
6     neighborhoods were represented on the CAC. Fifteen of the eighteen members of the CAC  
7     came from these neighborhoods. They reviewed the proposed Master Plan and its impacts  
8     in depth and up close. The majority voted to approve the proposed Master Plan with a set  
9     of mitigation measures that Children's has overwhelmingly accepted.

10                   **F.     LCC Myth #6: Anyone Who Supports Children's Master Plan**  
11                   **Has Been Appointed by Children's to Do So.**

12           In its Response, LCC insults Children's as well as other persons and entities who  
13     have supported Children's proposed Master Plan in this process. It starts in the caption  
14     itself: "LAURELHURST COMMUNITY CLUB'S RESPONSE TO CHILDREN'S  
15     HOSPITAL AND SURROGATES. . ." LCC Response at 1 (emphasis supplied). This  
16     attack is repeated in various parts of the Response:

17                   Children's *and its various surrogates*, including in this  
18                   instance DPD, have submitted among them 7 (seven) appeals  
19                   all seeking the same relief: that the Council overturn the  
20                   Examiner's denial recommendation.

21           Response at 5 (emphasis supplied).

22           A "surrogate" is "one appointed to act in place of another." Webster's Ninth New  
23     Collegiate Dictionary, 1988. The accusation then is that the Department of Planning and  
24     Development, the Coalition of Major Institutions, Friends of Children's, the Laurelon



1 Terrace Condominium Association, Catherine Hennings, and Steve and Dixie Wilson are  
2 not speaking for themselves, but rather at the “appointment” of Children’s.

3 Children’s is and has been the applicant for its Master Plan, before the CAC, the  
4 DPD, the Hearing Examiner and now the City Council. Children’s has spoken for itself  
5 throughout this two and a half year process and will continue to do so. To suggest that the  
6 DPD, an agency of the City, and other appellants named did not speak with their own  
7 independent voices on this matter is both highly dismissive and unsupported by the facts.  
8 These accusations are irresponsible.

9 This “myth” does not end with LCC’s accusation of “surrogateships.” In the case  
10 of the Citizens Advisory Committee (“CAC”) and the DPD, LCC is accusing Children’s of  
11 effectively browbeating the CAC and the DPD into support of this Master Plan. LCC  
12 states that the “CAC and DPD issued their reports based on presentations to them that were  
13 heavily dominated by Children’s,” implying that these two entities either did not act with  
14 an independent voice or they considered only information provided by Children’s. Appeal  
15 at 20. Neither of these suppositions is true. The CAC and the DPD acted independently of  
16 Children’s in making all of their judgments. The CAC and the DPD also used the same  
17 key sources of information as the Examiner, i.e. the Draft and Final EIS, the voluminous  
18 public comments received by DPD and the CAC (including LCC’s), and, of course, each  
19 other’s recommendations.<sup>5</sup> LCC also disparages the analysis by DPD’s transportation  
20 consultant, charging that the “theoretical constructs” used by the consultant “are based on  
21 mathematical modeling on a par with the derivatives that, contrary to all ‘expert’ wisdom,  
22

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23 <sup>5</sup> LCC and its representatives had the opportunity to speak at every one of the CAC’s  
twenty-six meetings and did so. *See* Ex. 8, Part V.

1 have brought Washington Mutual to extinction and our economy to its knees. Appeal at  
2 35.”<sup>6</sup>

3 Children’s is a highly regarded pediatric hospital that has been operating in Seattle  
4 for more than 100 years. Fortunately, Children’s has an enormous number of supporters –  
5 patients and families of patients who have been treated at Children’s, families who have  
6 never had to use Children’s, other medical organizations, social service organizations,  
7 businesses, foundations and many others. Children’s is a non-profit organization that  
8 depends upon its friends and supporters for its very existence. Persons and entities who  
9 choose to support Children’s Master Plan are not surrogates and it is insulting to make  
10 such an accusation.

11 **G. Children’s Requested Condition With Respect to Floor Area**  
12 **Ratio (FAR) is Reasonable.**

13 Both LCC and Grace Yuan have addressed the issue of FAR in their replies. LCC  
14 Reply, at 33-35; Yuan Reply, at 3-5. Admittedly, this issue can be confusing because of  
15 the different ways in which the CAC, DPD and the Examiner have addressed the issue of  
16 the allowable FAR. However, it is not an issue that requires remand for more information  
17 as Ms. Yuan requests. The Council can make this decision based upon the record before it.

18 First, it is necessary to clear up some confusion that is partly the result of how  
19 Children’s counsel framed the requested wording of approval “Condition 1” in Children’s  
20 Appeal of August 25 (at 21-22). Ms. Yuan is correct in stating that the applicant’s  
21  
22

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23 <sup>6</sup> The comments in the LCC Response, page 8, line 19 to page 9, line 2, are similarly  
dismissive.

1 requested amendment, at least with respect to approval "Condition 1," would change the  
2 description of the project. Yuan Response, at 4.<sup>7</sup>

3 In its Appeal statement, Children's mistakenly asked that "development on the  
4 expanded campus to a total of 2.4 million gross square feet" exclude "mechanical space"  
5 as well as the parking space which the Examiner had already recommended be excluded.  
6 Children's hereby withdraws its objection to Examiner's proposed approval Condition 1.

7 Children's Final Master Plan includes mechanical space for the proposed Master  
8 Plan development as part of its calculation of the 2.4 million developable gross floor area.  
9 For example, the description of the elements for the Phase 1 construction show that 63,400  
10 square feet of the total 592,070 square feet is mechanical space. See Ex. 4, at 68. As Ms.  
11 Yuan states, the EIS for the Master Plan made the same assumption.

12 With this correction (and with apologies for the prior mistake), there is no need to  
13 supplement the record with new information because there is no change to the proposal and  
14 the requested developable gross floor area is fully "covered by the range of alternatives and  
15 impacts analyzed in the existing environmental documents."

16 However, the issue of FAR is dealt with in approval Condition 2, where mechanical  
17 space can and should be considered. We will try to summarize the FAR issue here as  
18 clearly as we can:

19 Children's Proposed FAR: Children's will meet an FAR 1.9  
20 ratio that includes all developed space *above and below*  
21 *ground* except for parking structures and mechanical;  
Children's will also meet a 1.5 ratio for all developed *above*  
*ground space* other than parking structures and mechanical –

22 \_\_\_\_\_  
23 <sup>7</sup> Ms. Yuan filed a substitute Response letter on September 22, 2009, which was the day  
after the Council deadline for responses. She called Children's counsel and asked if  
Children's would agree to the late substitution, and Children's said yes.

1 this 1.5 ratio was recommended by the CAC. *See* Ex. 26,  
2 Slide 33.

3 DPD's Proposed FAR: DPD recommended an FAR of 1.9 in  
4 its initial Report (Ex. 9, at 74) without specifying what space  
5 is included in that calculation; DPD, on its Appeal, clarified  
6 its position to state the FAR "shall not exceed 1.9, excluding  
7 only parking and up to 3.5% of mechanical space." DPD  
8 Appeal, at 4.

9 CAC's Proposed FAR: CAC Recommended that Children's  
10 FAR not exceed 1.5, excluding below grade space, parking  
11 and mechanical space. Recommendation 3, and discussion  
12 at 19. Ex. 8.

13 Hearing Examiner's Proposed FAR: The Hearing Examiner  
14 recommended an FAR not to exceed 1.9, excluding below  
15 grade parking and rooftop mechanical, *see* Condition 2, at  
16 30.

17 Children's, DPD's and the CAC's FAR conditions are fully consistent except for DPD's  
18 limitation of the mechanical exemption to 3½%.

19 Children's proposed FAR of 1.9 that includes both above and below ground space,  
20 other than parking and mechanical space, is consistent with the way in which FAR is  
21 measured in its existing 1994 Master Plan, where parking space is excluded and 3½% of  
22 additional space is excluded to allow for mechanical. *See* Ord. 117319, Decision at 29.  
23 The formula in Children's existing Master Plan is what DPD has recommended as the FAR  
condition in its Appeal (at 4).

For perspective, the existing Children's campus FAR is 0.9 and the FAR for the  
Swedish First Hill campus 2005 MIMP is 5.5, excluding not only parking and mechanical  
space but also "interstitial space, below grade space [.and] circulation areas" (*See*  
Ordinance No. 121965). No matter what FAR ratio is used, development cannot exceed

1 the developable gross floor area of 2.4 million, which includes mechanical space but  
2 excludes parking space.

3 The Council's approval of a FAR condition in the form requested by Children's,  
4 DPD or the CAC would be satisfactory to Children's and consistent with the governing  
5 assumptions regarding FAR that prevailed during the Master Plan process. In fact,  
6 Children's has "tightened" its proposed FAR calculation, even from what is stated in the  
7 proposed Final Master Plan, by eliminating the previously requested exclusion of  
8 "interstitial space" and "circulation areas" from the FAR calculation. *See* Ex. 4, at 85.

9 The Examiner recommends excluding only below grade parking in the FAR  
10 calculation. *See* approval Condition 2. Although much of Children's parking is already  
11 proposed to be constructed below grade (*see, e.g.,* Ex. 81, Slides 20, 29), Children's needs  
12 the flexibility to provide some parking at or above grade in order to connect up to its  
13 hospital space in the most efficient manner. The Examiner's recommended condition  
14 would count concrete parking stall space in the FAR calculation instead of needed patient  
15 space.

16 The Examiner would also exempt only rooftop mechanical space. This provides an  
17 incentive to locate mechanical space on rooftops rather than integrate and hide it within the  
18 shell of the hospital buildings. Children's recommended exclusion of mechanical space,  
19 regardless of whether it is "roof top" or within the building, neutralizes that incentive and  
20 allows mechanical equipment to be located in the most functional, energy-efficient  
21 manner.

22 Ms. Yuan states that the applicant is "requesting a standard that is almost without  
23 precedent in the current City Code." Response, at 4. This is not true but the Council must

1 set a FAR standard as part of its approval of Children's Master Plan. As Children's stated  
2 in its Appeal (at 20-21), FAR is a "development standard" and, therefore, the City Council  
3 has the authority to set the FAR standard for Children's Master Plan. *See* SMC 23.69.030.  
4 Ms. Yuan cites the FAR requirements of other zones that are not applicable here. In fact,  
5 there are no FAR standards in the underlying S-F 5000 and L-3 zones upon which  
6 Children's campus is located. *See* Table 3, Ex. 4, at 89. The City Council must set an  
7 FAR development standard or there will not be one.

8 The Council's adoption of Children's requested FAR 1.9 standard (for above and  
9 below grade development) and FAR 1.5 standard (for above grade development),  
10 excluding parking and mechanical space, would be straightforward and consistent with  
11 both the DPD and CAC recommendations. It is also a much more rigorous method of  
12 calculating FAR than what the Council has recently allowed for other major institutions.

13 **H. The City's Urban Village Policies Provide No Basis for Denial or**  
14 **Limiting the Size of Children's Master Plan.**

15 The City's major institution code and policies create a "separate public process" to  
16 review major institution applications, and make no distinction between the growth allowed  
17 for major institutions whether located within or outside of an urban village (*see, e.g.,*  
18 Comprehensive Plan LUG 32 through LUG 35, LU 180 through LU 187, Revised FEIS,  
19 Ex. R-4, 3.7-21 through -24; Chapter 23.69, SMC). The clear separation between the  
20 major institution planning process and the rest of the City's zoning and land use rules and  
21 policies (*including* the urban village policies) provides needed flexibility by allowing the  
22 Council to approve development that would not normally be permitted in an area while  
23 affording the Council a great deal of control over the character of institutional  
developments. This flexibility as well as the Councils' approval of master plans on a case-

1 by-case basis advance the purposes behind the major institutions code. *See* SMC  
2 23.69.002.

3 Contrary to the Examiner's findings, and LCC's urging, the City's urban village  
4 policies were never intended to prohibit or limit the size of development permitted under  
5 the major institution planning process. The urban village goals themselves acknowledge  
6 this—stating that areas outside of urban villages should “[a]ccomodate growth *consistent*  
7 *with adopted master plans* for designated major institutions [in] the city,” UV39, and that  
8 these areas will “remain primarily as residential and commercial areas . . . or as . . . major  
9 *institutions*,” UV 35 (emphasis provided); *see also* SMC 23.34.008.E.4 (expressly  
10 authorizing increased heights for major institution rezones). The Examiner thus erred in  
11 relying on the City's urban village policies in finding that the size of the proposed  
12 development could not be approved under the major institutions code.

13 In its response, LCC offers an elaborate *post hoc* justification for the Examiner's  
14 decision, claiming that her references to the urban village policies merely provided  
15 “context” for the Examiner's “balancing” analysis. But even a cursory review of the  
16 relevant conclusions shows that this is not the case (*see, e.g.* Conclusions 42, 43). At the  
17 same time, LCC clings to its initial claim that the City's urban village policies were, in  
18 fact, intended to limit development approved under the major institution code—offering a  
19 tortured analysis of numerous code and Comprehensive Plan provisions to support this  
20 baseless claim (*see* LCC Response at 13-18). Children's will not repeat its response to this  
21 fallacious claim, which is discussed in detail in its Appeal and Response (*see* Appeal at 8-  
22 10; Response at 15-17).

1 LCC also points out that the Council has not designated Laurelhurst as an urban  
2 village, and speculates that the Council's inaction in this respect is somehow a clear  
3 message about the kind of development it deemed appropriate in the area. However, there  
4 is no need to rely on LCC's speculation to determine what kind of development the  
5 Council finds appropriate in this part of Laurelhurst. This is because the Council will  
6 decide *in this proceeding* whether Children's master plan is appropriate under the major  
7 institutions code. As noted above, the urban village policies do not trump—or otherwise  
8 limit—the Council's authority to approve a master plan under the major institutions code.  
9 LCC's attempt to tie the Council's hands on this basis should be rejected.

10 **I. A New Analysis of the SR 520 Project is Not Required or**  
11 **Permitted Under Council Rules.**

12 In her Response, Ms. Yuan argues that the record in this matter should be  
13 supplemented to include an analysis of the SR 520 project because construction on the  
14 Seattle side of the corridor is expected to begin in 2010.

15 Ms. Yuan's request to supplement the record, for this purpose or for purposes of  
16 the FAR issue, should be rejected because it does not meet the Council's explicit standard  
17 for supplementing the record, and because it is not even allowed under the rules for this  
18 proceeding. The Council's rules are clear that "[a] request to supplement the record *may*  
19 *be filed by a party of record.*" See Res. 31001 § V.B (emphasis provided). Ms. Yuan,  
20 however, is not a party of record (*see id.* § II.F), so her request to supplement the record is  
21 not permitted, even if she had filed and served her request as required under the Council's  
22 rules (*see id.* § V.B.3.b).

23 Ms. Yuan also failed to "include . . . a copy of the evidence proposed to be added"  
as required by the rules, or even specify what information on SR 520 and the FAR issue



1 should be added to the record. *See id.* § V.B.2.a.i. This illustrates a deeper problem with  
2 Ms. Yuan's request to supplement. She does not even attempt to justify her request with  
3 the standard for supplementation, which permits supplementation where the new evidence  
4 "was not available or could not reasonably have been produced at the time of the open  
5 record hearing before the Hearing Examiner." SMC 23.76.054.E; *see also* Res. 31001 §  
6 IV.B.2.a.ii. Notably, the information Ms. Yuan references in her request was not only  
7 available to the Examiner, but was made part of the Examiner's record and was fully  
8 considered in her recommendation. For example, contrary to Ms. Yuan's suggestion, it is  
9 no surprise that the SR 520 project is moving forward, that its construction will "overlap  
10 with the timeline for the build out of the master plan," or that traffic in the area "could be  
11 affected by the SR 520 project." *See* Yuan Letter at 2. These facts were available and  
12 considered in the proceedings below, as evidenced by information already in the record  
13 such as Exhibit R-10 (cited numerous times by Ms. Yuan), and the Examiner's explicit  
14 conditions and findings relating to the SR 520 project and the FAR issues. *See id.*; *see*,  
15 *e.g.*, Conclusions 15, 17-18, 27.

16 Funding has been approved for part of the SR 520 project, but the Examiner  
17 addressed this issue head-on in her recommendation. Ms. Yuan has not challenged the  
18 Examiner's conclusion that "the analysis [of the impacts of the SR 520 project] would be  
19 more accurate, and the mitigation more effective, *if current information available during*  
20 *the Master Use Permit process for each development were used.*" Conclusion 27  
21 (emphasis provided). Ms. Yuan claims that progress on the funding for the SR 520—a  
22 step that was fully expected and necessary for completion of the project—constitutes  
23 "changed conditions," and suggests that Children's should have to restart this two year

1 plus process to analyze this “new” aspect of the project. Ms. Yuan seeks a similar result  
2 by urging the Council to require “more information” on the FAR issue. In both cases,  
3 however, the record contains ample evidence for the Council’s consideration of these  
4 issues, and supplementing the record would only delay the Council’s consideration of this  
5 master plan. The Council should thus reject Ms. Yuan’s request to supplement.

6 In addition, the Council should be aware that the transportation analysis performed  
7 by the City as part of the EIS process (*see* FEIS, Ex. 6, at 3.10-1 through 3.10-65 and  
8 Appendix D) considers the volume of traffic that would be generated by the full build out  
9 of Children’s Master Plan, i.e. 2.4 million square feet. The FEIS also considers the  
10 impacts of Children’s construction traffic (*See* FEIS, Ex. 6, at 3.10-47 through 55). The  
11 potential overlap of Children’s construction traffic for Phase 1 and possibly Phase 2 with  
12 the construction traffic for the SR 520 project falls within the range of the full  
13 transportation analysis that is already in the record.

### 14 III. CONCLUSION

15 One of the critical functions of major institution master plans is to provide an open,  
16 predictable land use process to safeguard the interests of the neighbors of the institution as  
17 well as those of the institution. *See* SMC 23.69.002. LCC has a history of worrying that  
18 businesses, institutions and developers in northeast Seattle will fail to disclose their plans  
19 for growth. With this proposed Master Plan, Children’s has projected its needs fully and  
20 openly and put this information on the table as part of the master plan discussion. By  
21 putting its full proposal on the table, Children’s has enabled the community and the City to  
22 work with it in developing the best possible Master Plan, a Plan that mitigates, manages  
23 and minimizes the impacts.

1 LCC and others in the community have questioned the need for an expansion of the  
2 size requested by Children's for its patients. This is a Master Plan, not a development  
3 permit. The Council's approval of the proposed Master Plan will not directly authorize a  
4 single new facility.

5 Children's will not build any more space than it needs. Construction of hospital  
6 facilities is very expensive. The need for additional beds will and must be tested and  
7 proven on a phase by phase basis. This will require that Children's obtain the necessary  
8 certificates of need from the State Department of Health. The recommended CAC phasing  
9 and monitoring conditions that have been incorporated by the Examiner in her  
10 recommended approval conditions (Conditions 17 and 19) assure that new future  
11 construction is needed for patient care and directly related supporting uses. There is a  
12 network of mitigation measures, as well as checks and balances, built into the Master Plan  
13 as conditioned by the approval conditions recommended by CAC, the DPD, and the  
14 Examiner.

15 We look forward to answering any questions the Council has as we move forward  
16 in this process.

17 DATED this 28<sup>th</sup> day of September, 2009.

18 Davis Wright Tremaine LLP  
19 Attorneys for Seattle Children's Hospital

20  
21 By

22 John E. Keegan  
23 WSBA #0279

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2009 SEP 28 PM 4:20

**CERTIFICATE OF SERVICE**

I certify that on the 28 day of September, 2009, I sent copies of the following documents:

1. Seattle Children's Hospital Reply to Response
2. Certificate of Service

To the following parties by messenger:

1. Michael Jenkins c/o Clerk's Office  
Party Name

To the following parties by email, at the email address listed below for that party:

1. Catherine J. Hennings – Member of at cjhennings@gmail.com  
CAC/Laurelhurst Residence email address  
Party Name
2. Rick Barrett – Seattle Community at rickbarrett@gmail.com  
Council Federation email address  
Party Name
3. Judith Barbour – City of Seattle at judy.barbour@seattle.gov  
Party Name email address
4. Dixie and Steve Wilson at pbuck@bucklawgroup.com  
Party Name email address
5. Peter Buck – Laurelon Terrace at pbuck@bucklawgroup.com  
Party Name email address

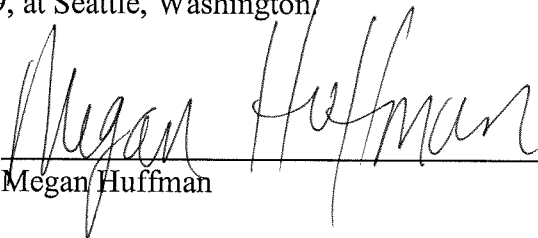
ORIGINAL

And to the following parties by first class mail, by depositing the copies in the U.S. mail by 5:00 p.m., with proper postage affixed, at the post office address listed below.

- |   |   |
|---|---|
| 1. <u>Thomas Walsh &amp; Judy Runstad -</u><br><u>Coalition of Major Institutions</u><br>Party Name<br><br><u>Foster Pepper PLLC</u><br><u>1111 Third Avenue, Suite 3400</u><br><u>Seattle, WA 98101</u><br>Mailing address | 2. <u>Steve Ross – Chair, Friends of</u><br><u>Children’s Hospital &amp; Resident of</u><br><u>Laurelhurst Neighborhood</u><br>Party Name<br><br><u>3625 – 47<sup>th</sup> Avenue NE</u><br><u>Seattle, WA 98105</u><br>Mailing address |
| 3. <u>Bonnie Miller – Hawthorne Hills</u><br><u>Community Council</u><br>Party Name<br><br><u>6057 Ann Arbor Avenue NE</u><br><u>Seattle, WA 98115-7618</u><br>Mailing address  | 4. <u>Peter J. Eglick &amp; Jane S. Kiker -</u><br><u>Laurelhurst Community Club</u><br>Party Name<br><br><u>Eglick Kiker Whited</u><br><u>1000 Second Avenue, Suite 3130</u><br><u>Seattle, WA 98104</u><br>Mailing address            |
| 5. <u>John V. Fox</u><br><u>For the Seattle Displacement Coalition</u><br><br><u>4554 12<sup>th</sup> NE</u><br><u>Seattle, WA 98105</u><br>Mailing Address   | 6. <u>Bill Kirlin-Hackett</u><br><u>For the Interfaith Task Force</u><br><br><u>3030 Bellevue Way NE</u><br><u>Bellevue, WA 98004</u><br>Mailing Address  |

I certify that under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 28 day of September, 2009, at Seattle, Washington/

  
\_\_\_\_\_  
Megan Huffman